

Case No.:

## Introduction

1.

cut GP-funded costs by USD2.2 million while also preparing for the very real possibility that further measures will be needed if the funding of UNODC is further affected by the global economic crisis”.

8.

noting that [he] would have already served the notice specified in [HRMS] letter of 30 March 2009”.

13. On 11 June 2009, the JAB issued a recommendation in favour of the suspension of action on the decision to separate the Applicant effective 30 June 2009.

14. By letter dated 23 June 2009, the Deputy Secretary-General took note of UNODC decision to temporarily reassign the Applicant to “the position of L-4/P-4 Project Coordinator of the UNODC Sub-Regional Programm



month extension to complete his application, which was granted by the Tribunal. On 30 July 2010, the Applicant filed a full application.

23. The Respondent submitted his reply on 30 September 2010, after seeking and obtaining an extension of time from the Tribunal.

24. On 25 October 2010, the Applicant submitted observations on the Respondent's reply.

25. By letter dated 24 November 2010, the parties were informed that the Judge hearing the case considered that an oral hearing was not necessary and were given until 1 December 2010 to take position thereon.

26. On 29 November 2010, both parties informed the Tribunal that they agreed that an oral hearing was not necessary.

#### Parties' contentions

27. The Applicant's principal contentions are:

a. In 2003, the Applicant was removed from his post as Chief of Protocol, in which he had an excellent performance record and 14 years of experience, in an arbitrary and humiliating manner and under a promise that he would keep return rights to UNOV. Therefore the Applicant has the right to be placed against a regular post in UNOV;

b. The subsequent decisions to reassign the Applicant, without his consent, to five different positions in areas totally alien to his qualifications and experience as Chief of Protocol, and the cancellation

c. The pattern of abuse continued by attempting to separate the Applicant from the Organization by offering him mutually agreed separation twice and by sending him a separation letter in 2009;

d. The above-mentioned decisions violated the Applicant's due process rights and inflicted on him emotional distress and hardship. Furthermore, by moving the Applicant from a regular budget post to temporary positions with uncertain sources of funding and for which the Applicant did not have the required qualifications and/or experience, the Respondent has paved the way for an easier separation;

e. The last of these decisions, i.e., the Applicant's reassignment to Abu Dhabi, is part of the continuous exercise of arbitrariness and harassment that commenced in 2003. It is an abuse of discretion and it is based on improper motives, including discrimination and harassment. Intention of harassment is further reflected in the issuance of a PA for one day, followed by another PA for 11 months and 30 days;

f. As per the Respondent's reply, within a few months only, multiple actions or decisions were taken regarding the Applicant's appointment status: review of his appointment on 2 February 2009, decision to extend his appointment through 31 December 2009 on 17 March 2009, decision to separate him effective 30 June 2009 on 30 March 2009, automatic implementation of the extension through 31 December 2009 on 17 April 2009, temporary reassignment to Abu Dhabi notified on 28 May 2009, etc. This reflects the kind of mental pressure the Applicant was subjected to;

g. Furthermore, by laterally reassigning the Applicant to Abu Dhabi without his consent, the Administration violated section 3.2(h) of ST/AI/2006/3 (Staff selection system), which provides that the staff selection system shall not apply to movement of staff who, like the Applicant, were previously appointed under the 100 series in accordance with staff rule 104.14 and who have agreed to participate in voluntary reassignment programmes;





c. The functions of the post established in the Cairo Regional Office under the 2010-2011 biennium budget, subsequent to the abolition of the Applicant's post, were substantively different from those previously carried out by the Applicant. This post was also funded from a different source;

d. The Applicant's temporary reassignment to the post of Programme Management Officer in Abu Dhabi from July to December 2009 was a good faith effort on the part of the Administration to retain the Applicant in active service after it had been decided to abolish his post in Cairo and pending his appointment by DPI, which however did not materialize given that the Government of Yemen did not clear the Applicant;

e. As regards the actual contested decision, i.e., the Applicant's lateral transfer to the post of Programme Management Officer in Abu Dhabi effective 1 January 2010, the decision falls within the discretionary authority of the Executive Director pursuant to staff regulation 1.2(c) and section 2.4 of ST/AI/2006/3.

d.



8. However, as WHO rightly contends, the complainant failed to submit an appeal against the decision in question to the Headquarters Board of Appeal within sixty days of being notified thereof, this being the time limit stipulated by Staff Rule 1230.8.3. This decision [to abolish the complainant's post] has therefore become final, with the result that the complainant may not challenge its legality in these proceedings in order to impugn the subsequent decision to terminate his appointment.

35. The scope of the present case is therefore limited to the decision to transfer the Applicant laterally from Cairo to Abu Dhabi, of which he was notified on 21 December 2009.

36. The relevant provisions in this respect are the following:

Staff regulation 1.2(c) provides that:

Staff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations.

ST/AI/2006/3 (Staff Selection System) dated 15 November 2006 stipulates that, notwithstanding the procedures applicable to the staff selection process:

2.4. Heads of departments/offices retain the authority to transfer staff members within their departments or offices to vacant posts at the same level.

Annex I (Responsibilities of the head of department/office):

1. The head of department/office has the authority ... [t]o transfer staff laterally within his or her department/office.

37. Staff regulation 1.2(c) gives the Secretary-General broad discretion in making reassignment decisions. Section 2.4 of ST/AI/2006/3 does not impose restrictions on such discretion in case of a lateral transfer. Notwithstanding, it has been consistently held that the Secretary-General's discretionary authority is not unfettered and must not be arbitrary and/or tainted by improper motives.

38. The former UN Administrative Tribunal stated for example in Judgment No. 1408 (2008):

Staff regulation 1.2(c) provides that “[s]taff members are subject to the authority of the Secretary-General and to assignment by him or her to any of the activities or offices of the United Nations”. The case law of the Tribunal has emphasized that the Secretary-General “generally enjoys broad discretion in making





laterally transfer a staff member within a department/office, the head of that department or office does not have to apply the new staff selection system.

Conclusion

45. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

(Signed)

Judge Thomas Laker

Dated this 2<sup>nd</sup> day of December 2010

Entered in the Register on this 2<sup>nd</sup>